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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 JIMMY ELLIS, CLARK,

9 Plaintiff,

10 NO. CV-10-104-EFS

11 v.

12 JUDGE SYPOLT,

13 ORDER DISMISSING COMPLAINT
14 WITH LEAVE TO AMEND

15 Defendant.

16 On April 9, 2010, pro se Plaintiff Jimmy Ellis Clark filed a Motion
17 for Order to Show Cause. (Ct. Rec. [2](#).) Mr. Clark claims that Spokane
18 County Superior Court Judge Sypolt unlawfully reinstated a civil case in
19 which Clark was the plaintiff after Eastern District of Washington Judge
20 Van Sickle remanded the case to state court. No. CV-05-140. Additionally,
21 Mr. Clark alleges that Judge Sypolt was part of a criminal conspiracy to
22 prevent Mr. Clark from reporting the theft of his property.

23 After conducting the required screening under 28 U.S.C. § 1915 for
24 a pro se in forma pauperis complaint, the Court determines that Mr. Clark
25 failed to state a claim upon which relief may be granted. A complaint may
26 be dismissed for failure to state a claim under Rule 12(b)(6) where the
 factual allegations do not raise the right to relief above the
 speculative level. *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009); *Bell Atl. v. Twombly*, 550 U.S. 544, 555 (2007). According to Mr. Clark, the case
 he filed in state court was not supposed to be a civil suit at all, but

1 a criminal complaint. He alleges that certain individuals stole upwards
2 of \$45,000.00 of his personal property, and that he was thwarted in his
3 attempts to prosecute the responsible parties. Judge Sypolt allegedly
4 converted the criminal complaint into a civil case, which the defendant
5 then removed to federal court. Judge Van Sickel remanded the case to
6 state court. The Court takes judicial notice of Judge Van Sickle's
7 order,¹ which says merely that the federal court lacks jurisdiction over
8 the claim. (Ct. Rec. 4 Ex. D.) The state court did not violate the order
9 by taking up the case after remand. But Mr. Clark claims that, after the
10 remand, Judge Sypolt collaborated with the wrongdoers to prevent Mr.
11 Clark from recovering for his losses. If true, this would constitute a
12 conspiracy to violate Mr. Clark's constitutional rights, in violation of
13 42 U.S.C. § 1983.

14 Because it is not absolutely clear that amendment is futile, the
15 Court grants Mr. Clark leave to amend his complaint. See *Noll v. Carlson*,
16 809 F.2d 1446, 1448 (9th Cir. 1987). Mr. Clark may submit an amended
17 complaint within thirty days. Mr. Clark is cautioned that the Court will
18 dismiss the complaint for failure to state a claim if an amended
19 complaint is not timely received. In the amended complaint, Mr. Clark

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22 ¹ The Court may consider documents that are either essential to the
23 pleadings and whose validity is not questioned. See *Lee v. City of Los*
24 *Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). The order in question is
25 the entire basis for Mr. Clark's claim. Mr. Clark included it along with
26 his motions, so he may not reasonably challenge its authenticity.

1 must submit detailed allegations specifying Judge Sybolt's role in the
2 conspiracy to deprive him of his rights.

3 Mr. Clark also requests that this case be transferred to Judge Van
4 Sickle because Judge Van Sickle wrote the initial order that he claims
5 Judge Sypolt violated. Both because the Court does not find that Judge
6 Sypolt violated that order and because Mr. Clark presented no valid
7 grounds for reassignment, the Court declines to transfer the case.

8 Accordingly, IT IS HEREBY ORDERED:

9 1) Plaintiff's Motion for Order to Show Cause ([Ct. Rec. 2](#)) is
10 **DENIED**. Plaintiff must submit an amended complaint within thirty days.
11 Failure to file an amended complaint will be construed as consent to
12 dismissal for failure to state a claim.

13 2) Plaintiff's Motion for Re-assignment of Judge ([Ct. Rec. 8](#)) is
14 **DENIED.**

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter
16 this Order and provide a copy to Plaintiff.

17 | DATED this 13th day of May 2010.

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ORDER ~ 3